

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PAUL J. SMITH,)	
)	
Plaintiff,)	
)	
v.)	Civ. Action No. 07-477-GMS
)	
REGIONAL MEDICAL FIRST)	
CORRECTIONAL, COMMISSIONER)	
CARL DANBERG, and THOMAS)	
CARROLL,)	
)	
Defendants.)	

MEMORANDUM

The plaintiff, Paul J. Smith (“Smith”), an inmate at the Delaware Correctional Center (“DCC”), filed this lawsuit pursuant to 42 U.S.C. § 1983. He appears *pro se* and was granted permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (D.I. 9.) The court now proceeds to review and screen the complaint pursuant to 28 U.S.C. § 1915 and § 1915A.

I. BACKGROUND

Smith alleges that he is being refused medical care for asthma, high blood pressure, hip pain, and lower lumbar support despite submitting sick call slip, after sick call slip. He alleges he contacted the defendant Warden Thomas Carroll, to no avail.

II. STANDARD OF REVIEW

When a litigant proceeds *in forma pauperis*, 28 U.S.C. § 1915 provides for dismissal under certain circumstances. When a prisoner seeks redress in a civil action, 28 U.S.C. § 1915A provides for screening of the complaint by the court. Both 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) provide that the court may dismiss a complaint, at any time, if the action is

frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. An action is frivolous if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

In performing the court’s screening function under § 1915(e)(2)(B), the court applies the standard applicable to a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *Fullman v. Pennsylvania Dep’t of Corr.*, No. 4:07CV-000079, 2007 WL 257617 (M.D. Pa. Jan. 25, 2007) (citing *Weiss v Colley*, 230 F.3d 1027, 1029 (7th Cir. 2000)). The court must accept all factual allegations in a complaint as true and take them in the light most favorable to plaintiff. *Erickson v. Pardus*, –U.S.–, 127 S.Ct. 2197, 2200 (2007); *Christopher v. Harbury*, 536 U.S. 403, 406 (2002). Additionally, a complaint must contain “‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, –U.S.–, 127 S.Ct. 1955, 1964 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). A complaint does not need detailed factual allegations, however “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 1965 (citations omitted). The “[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint’s allegations in the complaint are true (even if doubtful in fact).” *Id.* (citations omitted).

Because the plaintiff proceeds *pro se*, his pleading is liberally construed and his complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. *Erickson v. Pardus*, –U.S.–, 127 S.Ct. 2197, 2200 (2007) (citations

omitted).

III. DISCUSSION

Smith appears to name Department of Correction Commissioner Carl C. Danberg (“Danberg”) as a defendant based upon his supervisory position. Supervisory liability cannot be imposed under § 1983 on a respondeat superior theory. *See Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). In order for a supervisory public official to be held liable for a subordinate’s constitutional tort, the official must either be the “moving force [behind] the constitutional violation” or exhibit “deliberate indifference to the plight of the person deprived.” *Sample v. Diecks*, 885 F.2d 1099, 1118 (3d Cir. 1989) (citing *City of Canton v. Harris*, 489 U.S. 378, 389 (1989)).

There are no allegations directed towards Danberg. Additionally, there is nothing in the complaint to indicate that Danberg was the driving force behind the conduct described in Smith’s complaint. Moreover, the complaint does not indicate that Danberg was aware of Smith’s allegations and remained “deliberately indifferent” to his plight. *Sample v. Diecks*, 885 F.2d at 1118. Therefore, the court will dismiss without prejudice the claim against Danberg pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1).

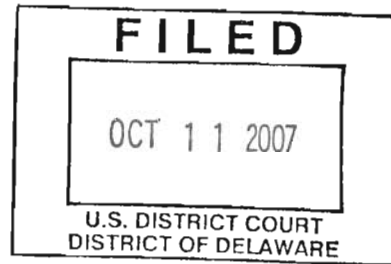
IV. CONCLUSION

Based upon the foregoing analysis, the court will dismiss without prejudice the claims against the defendant Danberg for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Smith will be allowed to proceed

against the defendants Regional Medical First Correctional and Warden Thomas Carroll. An appropriate order will be entered.

Oct 4, 2007
Wilmington, Delaware


UNITED STATES DISTRICT JUDGE



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PAUL J. SMITH,)	
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Plaintiff,)	
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REGIONAL MEDICAL FIRST)	
CORRECTIONAL, COMMISSIONER)	
CARL DANBERG, and THOMAS)	
CARROLL,)	
)	
Defendants.)	

ORDER

At Wilmington this 11th day of Oct., 2007, for the reasons set forth in the Memorandum issued this date,

1. The claims against the defendant Carl C. Danberg are **dismissed** without prejudice for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). He is dismissed from this action.

2. The court has identified cognizable claims within the meaning of 28 U.S.C. § 1915A(b) against the defendants Regional Medical First Correctional and Thomas Carroll. Smith is allowed to **proceed** against these defendants.

IT IS FURTHER ORDERED that:

1. The clerk of the court shall cause a copy of this order to be mailed to the plaintiff.
2. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), the plaintiff shall complete and return to the clerk of the court **original** "U.S. Marshal-285" forms for **remaining defendants Regional Medical First Correctional and Thomas Carroll**, as well as for the Attorney General of the

State of Delaware, 820 N. FRENCH STREET, WILMINGTON, DELAWARE, 19801, pursuant to DEL. CODE ANN. tit. 10 § 3103(c). **The plaintiff has provided the court with copies of the complaint (D.I. 2) for service upon each of the remaining defendants. The plaintiff shall also provide the court with copies of the supplement (D.I. 6) for service upon each of the remaining defendants. The plaintiff is notified that the United States Marshal will not serve the complaint until all “U.S. Marshal 285” forms have been received by the clerk of the court. Failure to provide the “U.S. Marshal 285” forms for the remaining defendant(s) and the attorney general within 120 days from the date of this order may result in the complaint being dismissed or defendant(s) being dismissed pursuant to Federal Rule of Civil Procedure 4(m).**

3. Upon receipt of the form(s) required by paragraph 2 above, the United States Marshal shall forthwith serve a copy of the complaint (D.I. 2), supplement (D.I. 6) this order, a “Notice of Lawsuit” form, the filing fee order(s), and a “Return of Waiver” form upon the defendant(s) identified in the 285 forms.

4. Within **thirty (30) days** from the date that the “Notice of Lawsuit” and “Return of Waiver” forms are sent, if an executed “Waiver of Service of Summons” form has not been received from a defendant, the United States Marshal shall personally serve said defendant(s) pursuant to Fed. R. Civ. P. 4(c)(2) and said defendant(s) shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

5. Pursuant to Fed. R. Civ. P. 4(d)(3), a defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the complaint within **sixty (60) days** from the date upon which the complaint, this order, the “Notice of

Lawsuit” form, and the “Return of Waiver” form are sent. If a defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

6. No communication, including pleadings, briefs, statement of position, etc., will be considered by the court in this civil action unless the documents reflect proof of service upon the parties or their counsel.

7. **NOTE: ***** When an amended complaint is filed prior to service, the court will **VACATE** all previous service orders entered, and service **will not take place**. An amended complaint filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. §1915(e)(2) and § 1915A(a). ***

8. **NOTE: ***** Discovery motions and motions for appointment of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service. ***


UNITED STATES DISTRICT JUDGE

